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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Rules Governing	)	CC Dkt. No. 92-26
Procedures to be Followed When	)	
Formal Complaints are Filed Against	)	
Common Carriers	)	

REPLY COMMENTS OF THE AMERITECH OPERATING COMPANIES

The Ameritech Operating Companies (Companies),[1] pursuant to §1.415 of the Federal Communications Commission's (Commission) Rules, 47 C.F.R. § 1.415, respectfully submit the following reply comments on the Commission's proposed changes to its formal complaint procedures.[2] The Companies support the Commission's intent to establish a more efficient and streamlined complaint process and, in this regard, the Companies provide their comments below.

The Companies along with many other commenters support the Commission's proposal to codify rules for the treatment of proprietary and confidential information.[3] Incorporating those requirement into the rules would save time now spent negotiating those agreements.

However, the Companies support certain changes to the Commission's treatment of confidential information proposed by two commenters.

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[1] The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

[2] *Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, CC Dkt. No. 92-26, Notice of Proposed Rulemaking, FCC 92-59, 7 FCC Rcd. (1992) (hereinafter *Notice*).

[3] *See e.g.*, Allnet at Attachment A, p. xi; AT&T at 4-5; North American Telecommunications Association at 10-11; and US West at 11-12.

Specifically, the Commission should modify its proposed language to include language explicitly limiting the use of confidential information to the prosecution or defense of the case before the Commission, and limiting the disclosure of confidential information to only those employees directly involved in the prosecution or defense of the case.[4] The Commission also should recognize additional safeguards may be needed to protect particularly sensitive proprietary information, and be willing to impose those safeguards.[5] Flexibility in the application of the confidential and proprietary rules is necessary to ensure that certain data be given adequate protection within the complaint process.

In addition, the Companies maintain that the shortened time period for filing answers to complaints and interrogatories will not adversely affect the complaint process. In those instances in which the carrier needs additional time, the carrier certainly may request it and the Commission should be willing to grant such requests.

Some of the Commission's recommendations to streamline the complaint process, however, would create confusion and uncertainty in the pleading and discovery process and therefore should not be adopted. The Companies, along with many other commenters, oppose the Commission's proposal to prohibit parties from challenging interrogatories based on relevance, and providing that such objections would serve as admissions against interest.[6] This proposed rule would create incentives for parties to

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[4] *See e.g.*, Allnet at Attachment A, p. xi.

[5] *See* AT&T at 4-5.

[6] *See e.g.*, AT&T at 5-6; BellSouth at 9; GTE at 3; Federal Communications Bar Association at 10; MCI at 21-22; and Pacific at 5; *but see* Continental Mobile Telephone Co. at 3.

manipulate the discovery process, and would raise myriad discovery questions regarding which facts were admitted by the party's relevancy objection.

In addition, the Companies, along with several commenters, oppose the Commission's proposal to prohibit replies to briefs or oppositions to motions.[7] Replies in many cases are necessary to further clarify and explore the legal and factual issues raised by the complaint. To this end, the replies serve an essential function of ensuring a complete and adequate record, as well as a full and fair discussion of the issues. Replies to briefs or oppositions to motions thus should not be eliminated in the Commission's formal complaint process.

Furthermore, the Companies oppose the requirement that motions to dismiss and motions for summary judgment be filed with the answer, 20 days after filing the complaint. As one commenter noted, that proposal is unduly stringent and unworkable.[8] Under such a requirement, parties would feel compelled to file motions with the answer, since that may be their only opportunity to argue their position. However, as the case moves through the discovery process, parties would file yet another motion when additional information supporting their position became available. Thus, the Commission most likely would receive a greater number motions under this proposal than under the current rules.

The Companies also oppose a recommendation advanced in one party's comments that all documents cited in a motion, pleading, or brief be

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[7] *See e.g.*, Federal Communications Bar Association at 5-6; Michael J. Hirrel at 6-7; MCI at 10-11; and United Video , Superstar, Southern, Netlink and EMI at 8-9.

[8] MCI at 8-11.

filed with the Commission if not already on file.[9] This proposal unreasonably shifts the burden of proving the allegations in the complaint from the plaintiffs to the defendants. In this regard, the plaintiffs would make specious allegations about a defendant's practices, which the defendant would deny, but in doing so, he or she would be required to produce all the documents disproving the allegations. Since the defendants would be *required* to *produce* the documents, the plaintiffs would no longer have to fashion relevant interrogatories and use the discovery process to prove their case. Rather, the defendant would have to disprove the plaintiffs' allegations. Moreover, this proposal would virtually inundate the Commission with documents regardless of their relevancy, creating a voluminous record in each and every case. Clearly this proposal in unreasonable.

Finally, the Companies submit that its proposal that discovery be supervised by an administrative law judge (ALJ) is the best solution to the Commission's goal of expediting the formal complaint process.[10] As noted in the Companies' comments, since the Administrative Procedures Act (APA) requires a hearing before an ALJ when there are disputed issues of fact, referring the complaint to an ALJ to supervise discovery before the hearing is reasonable for several reasons. First, ALJs tend to be experienced in handling discovery matters. Second, the ALJ will be able to conduct hearings more efficiently if he or she has become familiar with the issues and factual background through overseeing discovery and disposing of other preliminary matters.

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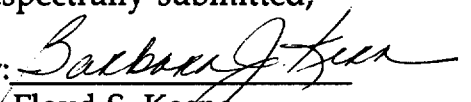
[9] Allnet at Attachment A, p. ii.

[10] Ameritech Operating Companies at 7-8.

The proposal expedites the complaint process because the Commission determines at the beginning of a complaint, through admissions of fact, whether the complaint can be decided on the pleadings, or whether discovery needs to be conducted. Therefore needless discovery is not used to unnecessarily delay resolution of the case. If parties agree to the facts as delineated in the admission of facts then only the regulatory and legal issues need to be resolved. At that point, the Commission and staff can expedite their decision on the merits of the complaint.

Based on the foregoing, the Commission should adopt the Companies' proposed modifications to the Commission's formal complaint process as described above.

Respectfully submitted,

By: 

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